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08/771,467	12/20/1996	PETER VAN VORIS	BTEL:025	4787

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LEVY, NEIL S

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1616

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

08	Application No. 171467	Applicant(s) VAN DORN et al
WBC/ey	Examiner WBC/ey	Group Art Unit 166 42

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

Responsive to communication(s) filed on 10/11/02.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

Claim(s) 1-7, 8, 11, 15, 30-41, 44-51, 453-63 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-3, 7, 8, 11, 30, 33-39, 41-48, 51, 53-57, 63 is/are rejected.

Claim(s) 4, 10, 31, 32, 40/49, 50, 58-62 is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 29, 40, 41

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

## Office Action Summary

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Receipt is acknowledged of amendment (9/3/02) IDS (9/3/02) and IDS (10/11/02).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 7, 8, 11, 30, 33-39, 44, 45, 51 are rejected under 35 U.S.C. 102(b) as being anticipated by VanVoris et al '88 ACS article.

Claim 1 requires (a) mixing liquid pesticide (p.225, last paragraph: Trifluralin was melted) a plurality of carrier particles (the trifluralin was blended with carbon blacks) and a hydrophobic thermoplastic polymer (PE was blended in), and (b) forming the mix in to a matrix with particles dispersed throughout – (The PE – Trifluralin – Carbon mix was used for injection molding (Last 3 lines, P. 225). Examples show the instant rate of release (Table 2) pesticides of the claims 8, 11 instant VP and Solubility at Table 1. Pellets and sheets (claims 33, 34, 35) or other forms are enabled, as injection molding permits any shape. Sheets (strips) and pellets are at p.232 where the instant concentrations of claim 36 are of the instant carbon black and polymers, thus issues of Liquid, powder are non-issues; the claimed process also utilizes the same polymers, and heated, would provide the same mix with the melted, thus liquid, Trifluralin, with further heating in the injection molding process which would result in pesticide carrier dispersion through the polymer. This reference does show the instant method of making the matrix and device, as claimed.

Claims 1-3, 7, 8, 11, 36-39, 41-48, 51, 53-57, 63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over

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claims 10-13, 15-20, 27 of U.S. Patent No. 5,985,304. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application is obvious over the patent because the recited method steps, and components and ratios there of included in these steps, in the open language, are encompassed in the patent, as the same components providing the "substantially not released" would provide the instant reduced release rate recited in the application.

The patent does not anticipate, because of the instant hydrophobic/Lipophilic balance of claims 37, 38. Note that the claims are to methods of making, not using; the devices, although shown as herbicidal, are made as exactly as claimed, of the same materials, and in fact, do protect wood roots; however no patentable weight is given to future intended use. Effective Life (Claim 44) is determinable over 1.7 to 68 years (p.233). There is no process step criticality associated with high or Low Polyethylene; polyethylene of VanVoris is generically inclusive. Applicant's arguments to the similar article, by the same authors, have been considered; in essence, this article shows the instant claim 1 process although the same components are provided, the actual release rate is not recited; Attainment of which is a function of the proportioning and selection, of the carrier, pesticide and polymer in order to provide the desired Length of time – i.e. 2 years of a high rate, or 60 years, of a low rate of release, as is within the purview of one skilled in the pesticide controlled release arts.

Claims 7, 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Vinyl acetate, isoprene are not polymers.

Claims 4, 15, 31, 32, 40, 49, 50, 58-62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 63 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed on 9/3/02 have been fully considered. Applicants arguments are persuasive and rejections withdrawn. However, IDS is more pervasive and, reconsideration has resulted in recognition by examiner of the overlap of prior art and the invention as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 876-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



NEIL S. LEVY  
PRIMARY EXAMINER